TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 480

LOUIS McNEESE, JR., A MINOR, BY MABEL McNEESE, HIS MOTHER AND NEXT FRIEND, ET AL., PETITIONERS,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT 187, CAHOKIA, ILLINOIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 3, 1962
CERTIORARI GRANTED DECEMBER 10, 1962

SUPREME COURT OF THE UNITED STATES

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 3, 1963

[fol. A]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13615

Appeal from the United States District Court for the Eastern District of Illinois. Honorable William G. Juergens, Judge Presiding.

LOUIS MCNEESE, JR., a minor, by Mabel McNeese, his mother and next friend, et al., Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT NUMBER 187, CAHOKIA, ILLINOIS, et al., Defendants-Appellees.

Appellants' Appendix—Filed March 19, 1962

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ILLINOIS

Civil Action No. 4868

LOUIS MCNEESE, JR., a minor, by Mabel McNeese, his mother and next friend, et al., Plaintiffs,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT NUMBER 187, etc., et al., Defendants.

STATEMENT UNDER RULE 16(b)—Filed October 6, 1961

1. This suit was instituted on September 12, 1961 upon and by the filing of the Complaint for Injunction and other relief, and a Motion for a Preliminary Injunction.

2. This is a class action filed on behalf of the named Plaintiffs and all other Negro children in Centreville, Illinois similarly situated, charging that the Defendants are maintaining and operating a racially segregated public school system.

3. On September 20, 1961, Defendants filed their Motion to Dismiss the Complaint and the Motion for Preliminary Injunction.

4. On October 6, 1961, Plaintiffs were given leave to file their Amended Complaint for Equitable Relief, and withdrew the Motion for Preliminary Injunction. Defendants extended their Motion to Dismiss to the Amended Complaint, and the Court, Honorable William G. Juergens, Judge, heard arguments of counsel.

[fol. 2] 5. On November 24, 1961, the Court allowed Defendants' Motion and ordered the dismissal of the Amended Complaint.

6. This appeal was taken by the filing of Notice of Appeal on December 22, 1961.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ILLINOIS

AMENDED COMPLAINT FOR EQUITABLE RELIEF

Plaintiffs, by Clayton R. Williams and Rogers, Rogers, Strayhorn & Harth, their Attorneys, complaining of the Defendants, herein, allege as follows:

I.

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, 1343 (3), this being a suit in equity authorized by law, Title 42, United States Code, 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges and immunities secured by the Consti-

tution and laws of the United States. The rights, privileges and immunities sought to be secured by this action, are rights, privileges and immunities secured by the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

II.

Plaintiffs in this action are all minors appearing by their parents and next friends. Plaintiffs are all citizens of the State of Illinois and of the United States, and are all residents and students in Community Unit School District [fol. 3] Number 187, St. Clair County, Illinois, and are all members of the Negro race.

III.

The questions which are the subject of this action are of common and general interest to all minors who are Negroes and who reside in and attend school in Community Unit School District, Number 187, St. Clair County, Illinois, Plaintiffs therefore bring this action on their own behalf and on behalf of all other Negro children and their parents in Centreville, Illinois who are similarly situated and affected by the policy, practice, custom and usage complained of herein.

IV.

The minor Plaintiffs herein and all other minor Negro children similarly situated are eligible to attend public elementary schools in Community Unit School District Number 187, which said schools are under the jurisdiction, management and control of the Defendants.

V.

The members of the class on behalf of which Plaintiffs sue, are so numerous as to make it impracticable to bring them all individually before this Court; but there are common questions of law and fact involved, common grievances arising out of common wrongs, and a common relief

is sought for each Plaintiff and each member of the class, and the Plaintiffs fairly and adequately represent the interests of the class.

VI.

The Defendants in this action are the Board Of Education for Community Unit School District Number 187, [fol. 4] (hereinafter referred to as "The Board"), a body politic, organized, existing, and operating under and by virtue of Chapter 122, Article 8, Illinois Revised Statutes, pursuant to an election heretofore duly held and conducted; Clarence D. Blair, County Superintendent of Schools for St. Clair County, Illinois, who was duly elected and is authorized to exercise the functions and perform the duties of that office, and who is actually in the exercise of such functions and the performance of such duties; and Robert F. Catlett, who is the duly appointed Superintendent of Schools for the aforesaid School District, and who was and is engaged in carrying out the functions and duties of that office.

VII.

The Defendants in this action are charged by the Laws of the State of Illinois with the duty of maintaining and operating a system of free public education in Community Unit School District Number 187, St. Clair County, Illinois, and are presently maintaining and operating public schools in the area or areas of their respective jurisdictions in purported pursuance of said laws. The Board has established and maintained within School District 187 free schools of different grades ranging from kindergarten through the twelfth grade, said schools being organized as elementary, junior high and high schools.

VIII.

The Defendants have adopted and pursued, and are presently pursuing a policy, custom and practice in assigning children to the elementary public schools of District 187 generally described as the "neighborhood school policy" or the "attendance area policy", whereunder children are

compelled to attend schools in the attendance areas in which they reside, and are not permitted to attend schools [fol. 5] in any other place, situation or location, except in certain special circumstances not applicable to these minor plaintiffs and the class on whose behalf they sue, and except as to certain fifth and sixth grade students who reside in the Centreville attendance area but who attend the Chenot School.

IX.

It is a matter of public knowledge that in Community Unit School District, Number 187, St. Clair County, Illinois, and elsewhere, Negroes perforce must reside within certain reasonably well-defined geographic confines, commonly known as ghettoes; that such ghettoes exist in said School District, and the Plaintiffs herein do, as members of the class on behalf of which Plaintiffs sue, live within the confines of such ghettoes.

X.

The existence of such ghettoes, as alleged, is and has been well known to the Defendants and each of them; and the boundaries of said ghettoes are and have been well known to the Defendants and each of them, and were well known to them at the time the boundaries of the attendance areas within said District were drawn.

XI.

Among the elementary schools in Community Unit School District 187 are the Chenot School and the Centreville School, and approximately four others, each such elementary school having its own attendance area.

XII.

Plaintiffs have been informed and so believe, and upon said information and belief state the fact to be that the [fol. 6] Chenot School, which was put into operation in the year 1957, was planned and built, and its attendance area boundaries were so drawn as to make it an exclusively Negro school in its student enrollment.

XIII.

That as a direct, proximate and foreseeable result of the Defendants' adoption and strict pursuance of the alleged "neighborhood school policy" or "attendance area policy", the Defendants have created and do maintain and operate racially segregated public elementary schools within Community Unit School District Number 187, and the minor Plaintiffs herein are compelled to attend school in such a racially segregated school by the acts of the Defendants herein, as follows:

A.

The Chenot School was put into operation in 1957. Prior thereto, Negro elementary school students residing in what is now the Chenot attendance area attended the Centreville School. However, said Negro children were perforce compelled to attend classes in the afternoon, exclusively while white children attended classes in the morning, exclusively, with the exception of certain slow white fifth and sixth grade students who attended classes all day.

B.

When the Chenot School was put into operation in 1957, all or practically all the children of elementary school age who resided in the Chenot attendance area were Negroes, a result intentionally achieved by the Defendants by the manner in which the Chenot attendance area boundaries were drawn, in pursuance of a plan to make Chenot School an all-Negro school in student enrollment.

[fol. 7]

C.

The Board, however, upon the opening of the Chenot School in 1957, because of overcrowded student enrollment in the adjacent Centreville School, transferred all fifth and sixth grade classes at Centreville School to Chenot School. These classes, consisted of approximately 97% white students and 3% Negro students. By directive of the Defendant Board, in pursuance of its design to maintain separate and racially segregated educational facilities for

Negro school children, or as nearly so separated and segregated as practicable, the said fifth and sixth grade classes, containing approximately 97% white students, were kept and maintained intact at the Chenot School, despite the fact that the children so involved were carried on the rolls as Chenot School students and their teachers as members of the Chenot School family.

D.

Since 1957, all fifth and sixth grade classes from Centreville School have been transferred to the Chenot School, and said classes have been kept and maintained intact while at the Chenot School.

E.

As a result of the above and foregoing, a situation of racially segregated and separate educational facilities was created and has been maintained by the Defendants; that a typical example of the results of the Defendants' said actions is indicated by the situation which prevailed at the Chenot School in the 1960-61 school year, when the following conditions existed:

1.

There were no white children of elementary school age residing in the Chenot attendance area, all said children [fol. 8] being Negroes, including the Plaintiffs herein and those on whose behalf this action is brought.

2.

Enrollment at the Chenot School consisted of 251 Negro students and 254 white students. All white students were in the fifth and sixth grade classes which were transferred from the Centreville School as aforesaid. Eight of the Negro students were in the fifth and sixth grade classes which were transferred from the Centreville School.

3.

There were a total of 18 classes at Chenot. Of these,

a) Ten classes had all Negro students.

b) Three classes had all White students.

c) One class had 3 Negro students, the remaining approximately 30 students being white.

d) One class had 2 Negro students, the remaining approximately 31 students being white.

e) Three classes had 1 Negro student each, the remaining approximately 85 students being white.

f) The seven Negro teachers on the faculty taught all-Negro classes exclusively.

g) Three white teachers taught all-Negro classes.

h) Three white teachers taught all-white classes.

i) Five white teachers taught the mixed classes referred to above.

j) No Negro teachers taught any white students.

k) The Negro students, with the exception of the eight who were in the classes transferred from Centreville School, attended classes located together in one part of the school building, separate and apart from the white students, and were further com- [fol. 9] pelled to use entrances to and exits from the school building separate from those used by the white students.

XIV.

Plaintiffs have been informed and so believe and upon such information and belief state the fact to be that all or substantially all of the above and foregoing conditions continue to exist at the Chenot School during the current school year.

XV.

The Defendants have failed and refused generally to desegregate the schools under their jurisdiction, but act in such a manner and fashion so as to perpetuate the system of segregated schools and facilities, created, maintained and operated by the Defendants contrary to and in direct conflict with the Constitution of the United States, despite requests, demands and pleas to the Defendants to cease and desist from their said unconstitutional acts as herein alleged.

XVI.

By reason of the "neighborhood school" or "attendance area policy" adopted and enforced by the Defendants as aforesaid, and as a result of the schemes, plans and contrivances of the Defendants in drawing the boundary lines of the attendance areas of the schools under their jurisdiction as aforesaid, in creating and maintaining racially segregated classes and separate educational facilities, the Defendants have created and are maintaining and operating racially segregated public elementary schools in Community Unit School District Number 187, St. Clair County, Illinois; and the minor Plaintiffs are assigned to and compelled to attend such a racially segregated school by the [fol. 10] acts of the Defendants herein; by reason thereof, Plaintiffs and all other Negro children similarly situated are denied by the Defendants the equal protection of the law and equal opportunity for education to which they are entitled by reason of the law. The actions of the Defendants violate the rights of the Plaintiffs and the members of their class which are secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

XVII.

Plaintiffs and the members of the class on whose behalf this action is brought, as a direct and proximate result of the Defendants' conduct as aforesaid in creating, producing, maintaining and operating segregated schools and educational facilities in their respective jurisdiction as afore-

said, and in requiring Plaintiffs and their said class to attend the same, suffer and sustain irreparable injury, and will continue to be irreparably harmed unless and until the unlawful acts of the Defendants are enjoined by this Court.

XVIII.

Any other relief to which the Plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny to Plaintiffs the substantial relief to which they are entitled, would involve a multiplicity of suits, cause further irreparable injury, and occasion damage, vexation and inconvenience, not only to the Plaintiffs and those similarly situated, but also to the Defendants as public officials.

XIX.

Plaintiffs herein have not exhausted any administrative remedies provided by the laws of the State of Illinois for [fol. 11] the reason that the remedy there provided is inadequate to provide the relief sought by the Plaintiffs in this case.

Wherefore, Plaintiffs respectfully pray, on their own behalf and on behalf of all others similarly situated, as follows:

a.

That the Court enter a decree adjudging and declaring the "neighborhood school policy" or the "attendance area policy" in Community Unit School District Number 187, as employed by the Defendants herein, to be illegal and unconstitutional, and in violation of the rights of the Plaintiffs and others in their class as a violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

b.

That the Court enter a decree adjudging and declaring the maintaining of racially separated and segregated classes

and educational facilities at the Chenot Elementary School to be illegal and unconstitutional, and in violation of the rights of the Plaintiffs, and others in their class as a violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States.

c.

That the Court enter a decree enjoining and restraining the Defendants and each of them, their agents, employees, subordinates and successors, from requiring the minor Plaintiff children and others of their class to attend racially segregated public elementary schools in Community Unit School District Number 187.

[fol. 12]

d.

That the Court enter a decree enjoining and restraining the Defendants, their agents, employees, subordinates and successors, from maintaining racially separated and segregated classes and facilities at the Chenot Elementary School.

e.

That the Court enter a decree requiring the Defendants, and each of them, their agents, employees, subordinates and successors, to register the minor Plaintiff children in public elementary schools in Community Unit School District Number 187 that are racially integrated, pursuant to a plan which is practical and feasible for the purposes intended, to be submitted by the Defendants to this Court for approval, and further, requiring compliance by the Defendants therewith, all with due deliberate speed.

f.

That the Court allow the Plaintiffs and each of them, their costs herein, and further, grant them such other, additional or alternative relief as justice, equity and good conscience may require.

Clayton R. Williams and Rogers, Rogers, Strayhorn & Harth, By: Raymond E. Harth, Attorneys for Plaintiffs.

State of Illinois
County of St. Clair—ss.

Mabel McNeese, Charles Dickerson and Thelma Wade, being first duly sworn, on their respective oaths depose and state that they are the parents of the minor Plaintiffs in the above Complaint, and that the matters stated are true in substance and in fact. As to those matters al- [fol. 13] leged in said Complaint to be upon information and belief, Affiants verily believe said facts to be true.

Thelma Wade, Mabel McNeese, Charles Dickerson.

Subscribed and sworn to before me this 6th day of October, A.D., 1961.

My commission expires: July 7, 1962. Marian Elliott Kaase, Notary Public.

Clayton R. Williams and Rogers, Rogers, Strayhorn & Harth, Attorneys for Plaintiffs, 720A Belle Street, Alton, Illinois.

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Illinois

* * (Caption—No. 4868) * *

MOTION OF DEFENDANT BOARD OF EDUCATION TO DISMISS COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION—Filed September 20, 1961

Defendant Board of Education moves the Court to dismiss the complaint and motion for preliminary injunction filed against it for the following reasons:

1. The complaint and motion do not state a claim upon, or a justiciable controversy in which, relief can be granted, in that, such pleadings contain no allegations of fact relating to the current school year, but contain only purported facts relating to the 1960-1961, and prior, school years.

[fol. 14] 2. The complaint and motion do not state a claim upon which relief can be granted, in that, plaintiffs have not, and do not allege that they have, as required, exhausted procedures under the law of the State of Illinois, whereas, there are now and were on the date of the filing of the complaint and motion several statutes providing remedies to persons aggrieved for the reasons complained of e.g., Section 22-19 of The School Code, (House Bill 609, approved July 31, 1961) a copy of which is attached hereto as Exhibit A.

3. Plaintiffs do not state a claim upon which relief can be granted with respect to any alleged discrimination in employment on account of color inasmuch as no rights of any of the plaintiffs secured by Amendment XIV to the Constitution of the United States or Title 42, Sections 1981 and 1983, of the United States Code are involved in said alleged discrimination.

4. Plaintiffs do not state a claim upon which relief can be granted with respect to the filing of any affidavits on the matter of the segregation of pupils on account of race, or discrimination in employment on such account, inasmuch as no rights of the plaintiffs secured by Amendment XIV to the Constitution of the United States or Title 42, Sections 1981 and 1983, of the United States Code are involved in said filings.

Wm. C. Dunham, Howard F. Boman, Attorneys for Defendant Board of Education.

Wm. C. Dunham, Howard F. Boman, First National Bank Building, East St. Louis, Illinois, BRidge 1-0535.

[fol. 15]

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Illinois

• • (Caption—No. 4868) • •

ANSWER TO MOTION OF DEFENDANTS TO DISMISS

Come now the Plaintiffs, by Clayton R. Williams and Rogers, Rogers, Strayhorn & Harth, their attorneys, and in answer to the motion of the Defendants to dismiss, state as follows:

I.

Plaintiffs' Amended Complaint contains allegations as to facts and circumstances existing during current school year.

II.

Plaintiffs' action, being brought under Sec. 1983, Title 42, United States Code, need not be preceded by the exhaustion of any state remedies.

III.

The alleged state remedies referred to by the Defendants are neither administrative, adequate, or available to the Plaintiffs herein.

IV.

Allegations in Plaintiffs' Complaint concerning discrimination in employment of teacher personnel and filing of false affidavits are merely indicative of the pattern of discrimination carried on by the Defendants and therefore afford no basis for dismissal of the Complaint.

[fol. 16] V.

In support of this Answer, Plaintiffs attach hereto and make a part hereof their memorandum of points and authorities.

Clayton R. Williams and Rogers, Rogers, Strayhorn & Harth, By: Raymond E. Harth, 720 A Belle Street, Alton, Illinois, Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Illinois

* * (Caption—No. 4868) * *

Filed November 24, 1961

ORDER DISMISSING COMPLAINT—November 22, 1961

The Court, having considered the respective motions of defendants Board of Education and Robert F. Catlett to dismiss the amended complaint, having heard oral arguments, and being fully advised in the premises, finds that the motions to dismiss the amended complaint should be allowed.

It Is, Therefore, The Order of this Court that the respective motions of defendants Board of Education and Robert F. Catlett to dismiss the amended complaint be and the same are hereby allowed and the plaintiffs' amended complaint is dismissed.

William G. Juergens, United States District Judge.

Dated: November 22, 1961

[fol. 17]

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Illinois

• • (Caption—No. 4868) • •

Filed November 24, 1961

OPINION—November 22, 1961

Juergens, Judge

This class action was instituted by the minor plaintiffs, who appear by their parents and next friends. Plaintiffs are citizens of the State of Illinois and reside within the Eastern District of Illinois.

Jurisdiction is founded on Title 28, U.S.C.A., Section 1343(3), and authorized by Title 42, U.S.C.A., Section 1983.

The amended complaint alleges that the minor plaintiffs are all Negro children, are eligible to attend public elementary schools in Community Unit School District No. 187, which schools are under the management and control of defendants; that the members of the class in behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before the Court, but there are common questions of law and fact involved, common grievances arising out of common wrongs, and common relief is sought for each plaintiff and each member of the class, and the plaintiffs fairly and adequately represent the interests of the class; that the defendants are presently maintaining and operating public schools in the area or areas of the respective jurisdictions in purported pursuance of the laws of the State of Illinois; that the defendants have adopted and pursued and are presently pursuing a policy, custom and practice in assigning chil-[fol. 18] dren to the elementary public schools in accordance with "neighborhood school policy" or "attendance area policy," where children are compelled to attend schools in the attendance areas in which they reside and are not permitted to attend schools in any other place except in certain special circumstances not applicable to these plain-

tiffs; that the Chenot School was put into operation in 1957 and was planned and built and its attendance area boundaries were so drawn as to make it an exclusively Negro school in its student enrollment; that as a direct, proximate and foreseeable result of the defendants' adoption and strict pursuance of the alleged "neighborhood school policy" or "attendance area policy", defendants have created and do maintain and operate racially segregated elementary schools and the minor plaintiffs are compelled to attend a racially segregated school by actions of the defendants herein; that prior to 1957 when the Chenot School was put into operation, Negro elementary school students residing in what is now the Chenot attendance area attended the Centreville School, where said Negro children were compelled to attend classes in the afternoon exclusively, while white children attended classes in the morning exclusively with the exception of certain slow white fifth and sixth grade students who attended classes all day; that when the Chenot School was put into operation, all or practically all of the children of elementary school age who resided in the Chenot attendance area were Negroes; that the manner in which the Chenot attendance areas were drawn resulted in making Chenot School an all Negro school in the student enrollment; that because of the crowded condition of the Centreville School, the Board of Education transferred all fifth and sixth grade classes at Centreville School to Chenot School; that these [fol. 19] classes consisted of approximately 97% white and 3% Negro students; that these classes were kept and maintained intact at the Chenot School despite the fact that the children so involved were carried on the rolls as Chenot students and their teachers as members of the Chenot faculty; that as a result of the above and foregoing a situation of racial segregation and separate educational facilities was created and has been maintained by the defendants; that the conditions created continue to exist; that the defendants have failed and refused to desegregate the schools under their jurisdiction but act in such a manner to perpetuate the system of segregated schools and facilities; that by reason of the "neighborhood school policy" or "attendance area policy" as adopted and enforced

by the defendants and as a result of the schemes, plans and contrivances of the defendants in drawing the boundary lines in the schools under their jurisdiction, the defendants have created and are maintaining and operating racially segregated public elementary schools in District No. 187 and the minor plaintiffs are assigned to and compelled to attend such racially segregated school by the acts of the defendants and consequently are denied the equal protection of law and equal opportunity for education to which they are entitled by reason of law; that requiring plaintiffs and their class to attend the segregated schools and educational facilities causes them to suffer and sustain irreparable injury and they will be irreparably harmed unless the defendants are enjoined by this Court; that any other relief to which plaintiffs could be remitted would be attended by such uncertainties and delays as to deny plaintiffs the substantial relief to which they are entitled; that plaintiffs have not exhausted any administrative remedies [fol. 20] provided by the laws of the State of Illinois for for the reason that the remedy there provided is inadequate to provide the relief sought by the plaintiffs. The plaintiffs pray that this Court enter an order adjudging and declaring the "neighborhood school policy" or "attendance area policy" as employed by the defendants to be illegal and unconstitutional and in violation of plaintiffs' rights and for other and further relief.

The Board of Education and Robert F. Catlett filed their motions to dismiss the complaint and motions for preliminary injunction. Thereafter, plaintiffs asked and were granted permission to file their amended complaint, the pertinent portions of which are above set out. They do not ask for a preliminary injunction in their amended complaint.

The Board of Education's and Robert F. Catlett's motions to dismiss the amended complaint are before the Court.

The question at this point is limited; it is one of procedure and not of substance; it is one of mere practice and not of merit.

At this juncture the question for the Court to determine is not whether the plaintiffs have been denied the equal

protection of the laws guaranteed to them by the Fourteenth Amendment but whether they have in the first instance proceeded in the proper manner for securing the remedies which have been provided (by the State of Illinois with an administrative review proceeding) in the event that their constitutional rights have been denied to them. [fol. 21] In support of their motions to dismiss the amended complaint, the Board of Education and Robert F. Catlett assert, among other things, that the plaintiffs have failed to exhaust the procedures provided under the laws of the State of Illinois, which provide remedies to persons aggrieved for the reasons complained of in the complaint.

Where a state law provides adequate administrative procedure for the protection of rights, the federal courts manifestly should not interfere with the operation of the schools until such administrative procedure has been exhausted and the intervention of the federal courts is shown to be necessary. *Parham* v. *Dove*, 8 Cir. 1959, 271 F. 2d 132. *Covington* v. *Edwards*, 4 Cir. 1959, 264 F. 2d 780.

Section 22-19, Chapter 122, Illinois Revised Statutes, 1961, provides as follows:

> "Sec. 22-19. Upon the filing of a complaint with the Superintendent of Public Instruction, executed in duplicate and subscribed with the names and addresses of at least 50 residents of a school district or 10%, whichever is lesser, alleging that any pupil has been excluded from or segregated in any school on account of his color, race, nationality, religion or religious affiliation, or that any employee of or applicant for employment or assignment with any such school district has been questioned concerning his color, race, nationality, religion or religious affiliation or subjected to discrimination by reason thereof, by or on behalf of the school board of such d 'rict, the Superintendent of Public Instruction shall ¡romptly mail a copy of such complaint to the secretary or clerk of such school board.
>
> "The Superintendent of Public Instruction shall fix a date, not less than 20 nor more than 30 days from [fol. 22] the date of the filing of such complaint, for a

hearing upon the allegations therein. He may also fix a date for a hearing whenever he has reason to believe that such discrimination may exist in any school district. Reasonable notice of the time and place of such hearing shall be mailed to the secretary or clerk of the school board and to the first subscriber to such complaint.

"The Superintendent of Public Instruction may designate an assistant to conduct such hearing and receive testimony concerning the situation complained of. The complainants may be represented at such hearing by one of their number or by counsel. Each party shall have the privilege of cross examining witnesses. The Superintendent of Public Instruction or the hearing officer appointed by him shall have the power to subpoena witnesses, compel their attendance, and require the production of evidence relating to any relevant matter under this Act. Any Circuit or Superior Court of this State, or any judge thereof, either in term time or vacation, upon the application of the Superintendent of Public Instruction or the hearing officer appointed by him, may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Superintendent of Public Instruction or the hearing officer appointed by him conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court. The Superintendent of Public Instruction or the hearing officer appointed by him may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. All testimony shall be taken under oath administered by the hearing of-
[fol. 23] ficer, but the formal rules pertaining to evidence in judicial proceedings shall not apply. The Superintendent of Public Instruction shall provide a com-

petent reporter to take notes of all testimony. Either party desiring a transcript of the hearing shall pay for the cost of such transcript. The hearing officer shall report a summary of the testimony to the Superintendent of Public Instruction who shall determine whether the allegations of the complaint are substantially correct. The Superintendent of Public Instruction shall notify both parties of his decision. If he so determines, he shall request the Attorney General to apply to the appropriate circuit court for such injunctive or other relief as may be necessary to rectify the practice complained of.

"The provisions of the 'Administrative Review Act,' approved May 8, 1945, and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of any final decision rendered by the Superintendent of Public Instruction pursuant to this Section."

Plaintiffs assert that the remedy provided by the statute, hereinabove set out, does not provide an adequate procedure whereby plaintiffs may present their case for consideration before an administrative agency in that a judicial remedy is provided by the statute rather than an administrative remedy; that there is no individual right since it is required that there be 50 signatures on the complaint and further that notice is sent only to the first person on the petition; that there is no action in behalf of an individual but rather the action is in behalf of the State of Illinois and thus there is no right of counsel or redress of wrong by an individual.

[fol. 24] The plaintiffs' contention that an administrative remedy is not provided by the statute above is without merit. By the statute the Superintendent of Public Instruction or an assistant designated by him is charged with the responsibility of conducting a hearing to determine the validity of the complaint authorized to be filed under the statute. The complainants are specifically granted the right of representation by counsel and are further granted the privilege of cross examination.

The action instituted here is a class action, wherein the plaintiffs seek to have this Court enter a remedial order in favor of the entire class and in the words of the complaint the entire school area here involved is comprised of persons who it is alleged by the complaint are aggrieved and for whom relief is sought. Thus, it would appear that had the plaintiffs sought to obtain the signatures of a sufficient number of persons to proceed under the statute, there in all likelihood would have been little difficulty in obtaining the number of signatures required.

Plaintiffs, however, have not endeavored by any manner or means to attempt a proceeding under the statute but rather have elected to ignore the statute and thereby deprive the State of Illinois the opportunity to rectify its own wrong if it is found that one does exist.

It may well be that an attempt by plaintiffs to meet the requirements of the statute may be unsuccessful in that they may not be able to obtain a sufficient number of signatures on the complaint, or it may be impossible for plaintiffs to cause the Superintendent of Public Instruction to intercede on his own volition; yet, the Court is of the opinion that until the plaintiffs have attempted to avail themselves of the provisions that the administrative re- [fol. 25] view provides, they have failed to comply in the remotest manner with the administrative remedy provisions, and until at least an honest attempt is made to pursue that remedy, this Court should not interfere with the state authorities and deprive them of the opportunity to put their own house in order. Since the plaintiffs have failed to pursue or even attempt to pursue the administrative remedy provided, this Court should not entertain this cause of action.

The mere assertion by plaintiffs that the administrative review provided for under the laws of the State of Illinois is inadequate, without first having attempted to utilize that remedy, does not show this Court that the administrative review is in fact ineffective to produce the result attempted by the statute and desired herein by these plaintiffs.

The motions to dismiss the amended complaint will be allowed.

William G. Juergens, United States District Judge.

Dated: November 22, 1961

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Illinois

* * (Caption—No. 4868) * *

NOTICE OF APPEAL—Filed December 21, 1961

Notice is hereby given that Louis McNeese, a minor, by Mabel McNeese, his mother and next friend, et al., Plain- [fol. 26] tiffs, herein, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the Order dismissing the above cause entered on November 24, 1961.

Rogers, Rogers, Strayhorn & Harth, and Clayton R. Williams, By: Raymond E. Harth, Attorneys for Plaintiffs.

Address for Service and Telephone: 69 W. Washington St., Suite 1600, Chicago 2, Illinois, RAndolph 6-9626.

[fol. 27]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13615

Appeal from the United States District Court for the Eastern District of Illinois. Honorable William G. Juergens, Judge Presiding.

LOUIS MCNEESE, JR., a Minor, by Mabel McNeese, His Mother and Next Friend, et al., Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT NUMBER 187, et al., Defendants-Appellees.

Appellees' Appendix—Filed April 19, 1962

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ILLINOIS

MOTION OF DEFENDANT ROBERT F. CATLETT TO DISMISS COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION

* * * * * * *

1. The complaint and motion for preliminary injunction do not state a claim upon which relief can be granted because the rights referred to as being secured by Amend-
[fol. 28] ment XIV to the Constitution of the United States and Title 42, Sections 1981 and 1983 of the United States Code, are rights guaranteed against a state, and not against an individual, such as this defendant.

2. He adopts the grounds set forth in the motion of the defendant Board of Education to dismiss the complaint and motion for preliminary injunction.

* * * * * * *

[fol. 29]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13615

September Term, 1961—April Session, 1962

Appeal from the United States District Court for the Eastern District of Illinois.

LOUIS MCNEESE, JR., a minor, by MABEL MCNEESE, his mother and next friend,

and

ELOUISE DICKERSON, a minor, by CHARLES DICKERSON, her father and next friend,

and

BETTY WADE and JUDITH WADE, minors, by THELMA WADE, their mother and next friend,

and

For these and all others similarly situated and who may become parties to this action, Plaintiffs-Appellants,

v.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT NUMBER 187, CAHOKIA, ILLINOIS,

and

CLARENCE D. BLAIR, County Superintendent of Schools for St. Clair County, Illinois,

and

ROBERT F. CATLETT, Superintendent of Schools for Community Unit School District Number 187, Cahokia, Illinois, Defendants-Appellees.

OPINION—July 5, 1962

[fol. 30] Before SCHNACKENBERG, CASTLE, and KILEY, Circuit Judges.

KILEY, Circuit Judge. This is a class suit on behalf of minor plaintiffs, and all others similarly situated, for redress of alleged deprivation, under color of Illinois law, of their rights to non-segregated public educational facilities in Community Unit School District No. 187, St. Clair County, Illinois.[1] The District Court dismissed the suit on defendants' motion. Plaintiffs have appealed.[2]

Plaintiffs are Negro elementary school students in the Chenot School in District No. 187, and all are residents of St. Clair County. The substance of their amended complaint is that before construction of the Chenot School in 1957 plaintiffs were compelled to attend the Centreville School in the District under a program which subjected them to discrimination because of their color; and that since 1957 the Chenot School has been maintained under a planned program of discrimination against them because of their color. They seek a decree declaring that the policies of District 187 are unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amend-

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[1] 42 U.S.C. §1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. §1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * * (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

[2] This court granted leave to the Chicago Board of Education to intervene as amicus curiae.

ment to the United States Constitution;[3] an injunction restraining defendants from maintaining their discriminatory policies; and a mandatory injunction requiring defendants to register plaintiffs in "racially integrated" public elementary schools in the District.

[fol. 31] The judgment of dismissal by the District Court was based on the ground that plaintiffs had "failed to comply in the remotest manner with" their administrative remedy under the Illinois School Code, Ill. Rev. Stat., 1961, ch. 122, §22-19. Plaintiffs contend that the judgment was erroneous because under the facts alleged in the amended complaint and admitted by defendants' motion they were not required to resort to the administrative remedy provided in the Illinois School Code; and that, in any event, that remedy is not administrative, but judicial and is inadequate. In their complaint they expressly state they have not exhausted the State remedy.

For the first contention they rely upon *Mannings* v. *Board of Public Instruction*, 5 Cir., 277 F.2d 370 (1960); *Borders* v. *Rippy*, 5 Cir., 247 F.2d 268 (1957); *Orleans Parish School Bd.* v. *Bush*, 5 Cir., 242 F.2d 156 (1957); *Bruce* v. *Stilwell*, 5 Cir., 206 F.2d 554 (1953); *Kelly* v. *Bd. of Ed. of City of Nashville*, 159 F. Supp. 272 (M.D. Tenn. 1958).

In *Mannings* the Board of Education had taken no affirmative steps under the *Brown* segregation cases[4] to effect the policy of desegregation. In *Borders* the Board admitted a policy which denied Negroes admittance to school because of color. In *Orleans* plaintiffs had exhausted their administrative remedy. The court nevertheless decided that pertinent Louisiana Constitution and statutory provisions were *per se* unconstitutional under the *Brown* cases. In *Bruce* it was admitted the Negro plaintiffs were denied admission to school because of color. In *Kelly* the court held the administrative power was

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[3] U. S. Const. amend. XIV, §1. "• • • No State shall • • • deny to any person within its jurisdiction the equal protection of the laws."

[4] *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and related cases.

already "committed in advance to a continuation of compulsory segregation."

These cases are not helpful to plaintiffs because of the admission, in each of them, of the fact of discrimination on which the unconstitutionality of the laws and policies involved was determined. That is not true here. Plaintiffs assume as a premise that defendants' motion admitted that before and since 1957, defendants have maintained a racially segregated school system which deprived plaintiffs of "equal opportunity for education." The premise begs the question. Defendants' motion admits facts [fol. 32] well pleaded but does not admit the alleged conclusion[5] that the well pleaded facts resulted in discrimination against plaintiffs because of their color.

The amended complaint, so far as pertinent, alleges that the Negroes in District 187, including plaintiffs, were compelled to live in Negro "ghettoes." There is no allegation that this is due to any conduct of defendants. It is alleged that defendants had these "ghettoes" in mind when they made up the "attendance area policy" under which children in exclusively Negro areas are not permitted to attend schools in other areas. There is no allegation that the "attendance area policy" is unconstitutional *per se* as in the *Orleans* case or that the areas were not drawn consistently with an orderly administration of schools, in the light of the population facts as defendants found them, and in a constitutional manner. This distinguishes *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960) where the Alabama law redefining boundaries of the City of Tuskegee was plainly, deliberately designed to disenfranchise Negroes.

The amended complaint alleges that the Chenot School "attendance area" was planned and drawn so as to make it exclusively Negro. But it is not alleged that the area was not planned and drawn on a rational basis in a proper administrative function, or that it could or should have been planned or drawn otherwise. It is alleged that prior to 1957 Chenot area children attended Centreville School where they were required to attend afternoon classes while white children in the Centreville area were compelled to attend exclusively morning sessions. But it is

[5] 2 Moore, Federal Practice ¶12.08.

alleged that "certain slow white fifth and sixth grade" children attended classes all day and that since 1957 fifth and sixth grades from Centreville's overcrowded school, consisting of 3% Negro and 97% white students, attended Chenot School.

We think this analysis of the amended complaint is sufficient to distinguish the cases relied on by plaintiff. It is analogous to a statute which is not unconstitutional "on its face"; and it fails to allege a cause of action which justifies a failure to resort to administrative remedies. *Carson* v. *Warlick*, 4 Cir., 238 F.2d 724, cert. denied, 353 U.S. 910 (1956). Because the amended complaint does not allege school board policies which are unconstitutional in [fol. 33] themselves, plaintiffs are required to resort to the remedy held forth in the Illinois School Code before seeking the aid of a Federal Court. *Ibid.*; *Parham* v. *Dove*, 8 Cir., 271 F.2d 132 (1959).

The fact that this is a class suit attacking alleged segregation policies and that the *Carson* and other Fourth Circuit cases referred to by plaintiffs involved individual claims of denial of individual civil rights is of no consequence in our decision. The plaintiffs in their class suit are presenting claims based on the denial of civil rights of the individual members of the class represented in the suit. And the class action was a mere procedural vehicle by which the individual rights, common to all members of the class, were presented to the court. The basis of the claims of transgression of individual rights is the same in this case as in *Carson* and others to the same effect.

We see no merit to the plaintiff's contention that the remedy held out in the Illinois School Code is judicial rather than administrative and that therefore the rule of exhaustion of administrative remedy is inapplicable. In *Cook* v. *Davis*, 5 Cir., 178 F.2d 595 (1949) the school administrators had greater power to correct discrimination in teachers' salaries complained of there than the Superintendent of Public Instruction has under the Illinois School Code to correct the alleged unlawful conduct here. We think, nevertheless, we must apply to plaintiffs' contention here the reasons given by the court there in holding the State remedy administrative and not judicial: The Super-

intendent of Public Instruction in Illinois has no judicial power and his finding of fact as to whether segregation on account of race or color is being practiced in a school district is not binding in a suit at law or in equity; a complaint before him "may cause an adjustment" if there is substance to the allegations in that complaint; and his decision, when made, merely ripens the controversy for judicial action if needed. On this point plaintiffs are not aided by *Lane* v. *Wilson*, 307 U.S. 268 (1939). The pertinent issue there was whether plaintiff had to resort to the State Courts to "vindicate his grievance" of denial of franchise.

The final contentions made by plaintiffs are that the Illinois administrative remedy is not available to individuals since it must be initiated by a complaint signed by at least fifty persons; and that the remedy is inadequate because [fol. 34] the Superintendent of Public Instruction has no power himself to correct the discrimination if he finds it to exist. The requirement of fifty signatures is not in itself an unreasonable one, since the function of the requirement is similar to that of a class suit, that is, one of convenience and orderly procedure for presentation in a common cause many individual complaints instead of many individual particular causes. Also, defendants point out with force that the allegations of the complaint indicate that the School Code remedy would not practically be unavailable to plaintiffs. Furthermore, the School Code gives the Superintendent the power to initiate a hearing whenever he has reason to believe discrimination may exist in any school district. There is no claim that any individual in the class represented by plaintiffs requested the Superintendent to initiate a hearing. And, in practice, if an individual is denied the remedy he may then turn to the Federal Courts.

We must assume the administrative officials will do their duties under the School Code, *Carson* v. *Warlick*, 4 Cir., 238 F. 2d 724, 728, cert. denied, 353 U.S. 910 (1956), and it is generally accepted in the cases[6] that Federal Courts should not interfere with a State's operation and administration of its schools, nor with the performance of adminis-

[6] *E.g.*, *Parham* v. *Dove*, 8 Cir., 271 F.2d 132 (1959); *Carson* v. *Warlick*, 4 Cir., 238 F.2d 724, cert. denied, 353 U.S. 910 (1956).

trative duties, in the absence of necessity, until administrative remedies have been exhausted.

For the reasons given, we hold that the District Court did not err in "dismissing" plaintiffs' suit on the ground that plaintiffs had not resorted to their administrative remedy under the Illinois School Code.

The judgment of the District Court is Affirmed.

A true Copy:

Teste:

....., Clerk of the United States Court of Appeals for the Seventh Circuit.

[fol. 35]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

Before

Hon. Elmer J. Schnackenberg, Circuit Judge.
Hon. Latham Castle, Circuit Judge.
Hon. Roger J. Kiley, Circuit Judge.

No. 13615

Appeal from the United States District Court for the Eastern District of Illinois.

LOUIS MCNEESE, JR., a minor, by Mabel McNeese, his mother and next friend, et al., Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT NUMBER 187, CAHOKIA, ILLINOIS, et al., Defendants-Appellees.

JUDGMENT—July 5, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

[fol. 36] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 37]

SUPREME COURT OF THE UNITED STATES

No. 480, October Term, 1962

LOUIS McNEESE, JR., a minor, by Mabel McNeese, his mother and next friend, et al., Petitioners,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT 187, Cahokia, Illinois, et al.

ORDER ALLOWING CERTIORARI—December 10, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.